

Alpine Amador Butte Calaveras Colusa  
Del Norte El Dorado Glenn Imperial  
Inyo Lake Lassen Madera Mariposa



Merced Modoc Mono Napa Nevada Placer  
Plumas San Benito Shasta Sierra Siskiyou  
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April 8, 2011

Delta Stewardship Council  
980 Ninth Street, Suite 1500  
Sacramento, CA 95814  
Sent via E-mail: [deltaplancomment@deltacouncil.ca.gov](mailto:deltaplancomment@deltacouncil.ca.gov)

**Re: Second Staff Draft of the Delta Plan (dated March 18, 2011)**

Dear Chairman Isenberg and Members of the Council:

On behalf of the thirty member counties of the Regional Council of Rural Counties (RCRC) I appreciate the opportunity to submit the following comments on the staff Second Draft of the Delta Plan dated March 18, 2011. These comments build upon comments previously submitted on the Second Draft Interim Delta Plan, the Notice of Preparation (NOP) for the Delta Plan, and the First Draft of the Delta Plan.

RCRC has chosen to make select comments on the Second Draft of the Delta Plan (Second Draft) in the hope that the third draft will be dramatically revised and we can then submit more focused comments. We have also chosen, for the most part, not to repeat comments submitted to the Council previously.

**Chapter 1**

**Geographic Scope and Use of the Delta Plan**

***Page 4, lines 38-42***

The Second Draft begins to address the issue of the Council's regulatory authority i.e. findings of consistency by local and state agencies for proposed plans, programs and projects that meet the definition of a "covered action" vs areas outside the Council's regulatory authority where the Council is limited to making recommendations to state, federal and local agencies. However, the Second Draft still seeks to expand the authority of the Council beyond that which is provided for in statute. This is a fundamental flaw that diminishes the credibility of the Second Draft of the Delta Plan.

***Page 6, lines 20-25***

The Second Draft states "...when a covered action has a connection to an out-of-Delta action...." This statement, which appears throughout the Second Draft (in a box), seems to indicate that the Council believes it has some type of authority over out-of-

Delta actions. Again, it is RCRCs strong belief that the Delta Reform Act does not give the Council regulatory authority beyond the Delta and the Suisun Marsh.

### Phasing of the Delta Plan and the First Five Years

*Page 8, lines 9-14*

The declaration that “the first step towards achieving the coequal goals is to halt, to the extent feasible, new or additional practices and activities within the Delta....” is far-reaching and could have an extremely detrimental socioeconomic impacts on those who live and work in the Delta, among others.

The phrase “or that have an impact on the Delta” seems to imply that the Council would seek to halt new or additional practices and activities outside of the Delta which “....further erode water supply reliability or water quality; degrade the Delta ecosystem; or increase risk to people, property or statewide interests.” This proposed expansion of the Council’s authority exceeds the authority provided for in the Delta Reform Act.

### **Chapter 3**

#### Delta Stewardship Council Governance Roles

*Page 21, lines 28-30*

The sentence in question states “Decisions of the Council will be based upon their full authority, including the Act, any applicable provisions of the Constitution of the State of California, this Delta Plan, best available science, and the full record before them.” While clearly SB 7x 1 provides the Council with some limited authority, the reference to the California Constitution in the sentence is confusing. While the California Constitution is law, it does not provide the Council itself with any authority. RCRC staff suggests that this sentence be re-written/clarified.

#### Submissions of Certification for Proposed Covered Actions

*Pages 22-23*

RCRC staff understands from the discussion at the Council meeting that this section will be reworked - so we will not submit comments at this time except to urge that provisions be made for small projects and that serious consideration be given to limiting these extensive requirements to large projects.

#### Review and Revision of the Delta Plan

*Page 26*

GP P10 states that the Council shall conduct adaptive management review of the Delta Plan at least once every five years and discusses four phases including under #3 the assessment of the legal, administrative and financial feasibility (emphasis added) of possible adaptive management actions. RCRC believes that this is a very important point that must be seriously considered at the initial adoption of the Plan and each time it is reviewed.

#### Recommendations for Legislative Action

*Page 27*

GP R1 states that the Council supports creation of a benefit assessment flood management agency for the Delta. RCRC notes that Delta landowners already pay assessments to maintain the levees and seriously questions the creation of yet another

new agency. Additionally, including such a “recommendation” for legislative action is of little value absent more detail as to what the Council envisions would be the authority and duties of such an agency, the interrelationship of the benefit assessment flood management agency with the existing reclamation districts, etc.

## **Chapter 4**

### **Water Resources Policies**

*Page 29, lines 11-19 and Page 30, lines 1-3*

RCRC believes that utilizing the term “public trust” when referring to flow standards in (a) and (b) is inaccurate and should be deleted. The State Water Resources Control Board (State Water Board) must balance all beneficial uses when developing flow standards – not just public trust values.

In (c) it states that if the State Water Board fails to act by the dates specified in the Delta Plan in adopting flow standards that “the Council will consider new projects or covered actions to be inconsistent with the Delta Plan.” As the Council’s authority is limited to determining if covered actions are consistent or inconsistent with the Delta Plan it is unclear as to what “new projects” refers to. RCRC urges that this sentence be re-worked for the sake of clarity.

(c) and (d) states that prior to the date indicated that “the Council will utilize existing Delta flow standards”. Clarification is requested. How does the Council envision they would “utilize” existing flow standards?

### **Regional Water Self-Sufficiency**

*Page 30-31*

WR P2 is very confusing as written. It proposes to require all water agencies within the primary and secondary planning area to develop and implement a plan similar to an Integrated Regional Water Management Plan, no later than January 1, 2015 and to update that plan at least every five years. The proposed penalty for noncompliance is that water resource “covered actions” will be found inconsistent with the Delta Plan. The Second Draft also specifies a number of key elements that must be included in the regional plans.

RCRC does not believe that the Council has the authority to require any agency to undertake the extensive planning processes outlined. Please see our previous comments on the NOP relating to the enabling statute and the term “promote”.

The only “covered action” that comes immediately to mind that could impact water agencies north of the Delta is if they desired to transfer water through the Delta to buyers south of the Delta. RCRC believes it likely that the multiple planning requirements specified in WR P2 would impact the willingness of these Northern California water agencies to engage in water transfers. Is this really what the Council wants to do?

While RCRC does not believe that the Council has the authority to require agencies to develop the proposed plans we submit the following observations:

One of the elements of the required plan is that each region or agency adopts plans which allow continuation of water service to their customers for up to six months if there is an interruption of water supplies from the Delta. As north of the Delta water agencies do not rely on water supplies from the Delta requiring the inclusion of this element does not make sense. This same comment applies to the seawater desalination element.

The water use efficiency element requires that each region or agency meet the standards established in SB 7x 7 for water use efficiency. The element goes on to state that should no action revising the standards be taken in 2025, 2030 and beyond that the Council (in consultation with the Department of Water Resources and the State Water Board) will develop new standards. RCRC is not aware of any statutory authority giving the Council the authority to develop water use efficiency standards.

Likewise, RCRC questions the Council's authority relating to the water recycling element, the sustainable water supply element, the non-potable groundwater element, the storm water capture and recharge element, and the seawater desalination element.

#### *Page 31*

WR P 3 states that water users who impact the Delta (receiving water diverted or exported from the Delta or Delta watershed) shall report on water use and that the reporting shall include a full water balance, including production from all sources system losses, changes in storage and water use. Water use reporting requirements are within the purview of the State Water Board, not the Council.

WR P8 requires agencies currently receiving water diverted or exported from the Delta or Delta Watershed to develop and implement a sustainable rate structure that encourages and supports water use efficiency that includes, but is not limited to, a tiered rate structure. Again, RCRC questions the authority of the Council to impose these requirements upon local agencies.

### **Chapter 5**

#### **Ecosystem Restoration Policies**

##### *Page 34, lines 29-36*

ER P5 again utilizes the term "public trust" flow standards. Please see previous comments on this subject.

### **Chapter 7**

#### **Reduce Delta Flood Risk**

##### *Page 44*

RR R6. Please see previous comments on the creation of a Delta Flood Control Assessment District.

### **Chapter 8**

#### **Delta as an Evolving Place Recommendations**

##### *Page 46*

DP R2 states that the Council supports the creation of a system of "payments in lieu of taxes" to replace the loss of local government revenues resulting from the removal of properties from property tax rolls for ecosystem restoration or water supply purposes.

This recommendation is unlikely to give the Delta counties much comfort as the State has proven to be an unreliable partner to local agencies. For example, the Department of Fish and Game (DFG) owes 36 counties about \$19.4 million through 2010 for payments in lieu of taxes on lands acquired and operated by DFG as wildlife management areas. Partial payments were made from 1993 – 2001, followed by zero payments from 2002 on. More recently, the Legislature has greatly reduced, and now has eliminated, Williamson Act subvention payments to counties for the state share of this important program – a loss to counties of \$38 million per year if fully funded.

## **Chapter 9**

### **Finance Plan to Support Coequal Goals**

#### **Page 47**

RCRC will limit our comments on this chapter as it is anticipated that it will undergo substantial revision. The Council is only one of a number of state agencies that are seeking sources of funding in these tough budget times, and there are numerous other important statewide water related unmet funding needs besides the Bay Delta Conservation Plan and Delta ecosystem restoration. For example, the Legislative Analyst's Office (LAO), working with the California Research Bureau, has estimated the unmet funding demands for drinking water infrastructure (statewide) at \$39 billion over a period of 20 years, wastewater infrastructure at \$29.9 billion over a period of 20 years; and flood infrastructure at \$26 billion over a period of 20 years.

Therefore, it is very important that the Council and the Delta Plan concentrate its attention on actions and activities in the Delta as required by the Delta Reform Act.

#### **Conclusion**

In conclusion, RCRC urges the Council to re-think the direction in which it is heading. The Second Draft is unsupportable as written. RCRC believes that it is more important for the Council to get it "right" and to develop a realistic, affordable and implementable Delta Plan as opposed to adopting a Delta Plan by the specified deadline that does not have the buy-in of the stakeholders - and is challenged every step of the way.

Please feel free to contact me at (916) 447-4806 if you have any questions.

Sincerely,



Kathy Mannion  
Legislative Advocate

cc: Joe Grindstaff, Executive Officer  
Terry Macaulay, Deputy Executive Officer